

**WAUKESHA COUNTY
MINUTES OF THE PARK AND PLANNING COMMISSION
THURSDAY, FEBRUARY 5, 2004, 1:00 P.M.**

CALL TO ORDER

Betty Willert, Chairperson, called the meeting to order at 1:00 p.m.

Commission

Members Present: Betty Willert, Chairperson
Mareth Kipp
Vy Janusonis
Ellen Gennrich
Walter Kolb
Joe La Porte
Walter Baade

Commission

Members Absent: None

Staff

Members Present: Richard L. Mace, Planning and Zoning Manager
Kathy Moore, Senior Planner
Sheri Mount, Land Use Specialist
Hans Dumke, Land Information System Analyst
Sherrie Villarreal, Clerk Typist III

Guests Present: Chris Graham
Bob Koepp
Jim Jeudusa

PUBLIC COMMENT

Chairperson Willert asked if anyone from the audience wished to address the Commission? There being no one, she moved to the next item on the agenda.

MINUTES

• **November 6, 2003**

Mrs. Gennrich moved, seconded by Mr. Janusonis and carried unanimously, for approval of the November 6, 2003 Minutes.

• **November 20, 2003**

Mr. Baade moved, seconded by Mrs. Gennrich and carried unanimously, for approval of the November 20, 2003 Minutes.

• **December 4, 2003**

Mr. Baade moved, seconded by Mr. Janusonis and carried unanimously, for approval of the December 4, 2003 Minutes.

• **December 18, 2003**

Mr. Kolb moved, seconded by Mrs. Baade and carried unanimously, for approval of the December 18, 2003 Minutes.

- **January 8, 2004**

Mr. Baade moved, seconded by Mrs. Gennrich and carried unanimously, for approval of the January 8, 2004, Minutes.

- **ZT-1516 (Text Amendment) Town of Brookfield**

Mr. Mace presented the “Staff Report and Recommendation” dated February 5, 2004, and made a part of these Minutes. The Town of Brookfield is requesting a text amendment to the Zoning Ordinance, Section 17.04(20)(c), to remove the required minimum parcel size for allowing a Planned Unit Development project, and to create Section 17.15, regarding the regulation of construction and placement and use of communication facilities and towers.

Mr. Mace pointed out that in order to allow a Planned Unit Development, the Town of Brookfield Zoning Code presently requires a minimum parcel size of five acres. This proposed amendment would not require a minimum parcel size to qualify for a Planned Unit Development. He stated the Waukesha County Code and Shoreland Ordinance does not have a minimum parcel size so the Town’s amendment is mirroring the County’s Code. In addition, the Town intends to create a new provision to regulate communication towers as a Conditional Use. The provisions establish a process, minimum standards, alternative analysis evaluation and numerous other guidelines by which the Town will decide whether or not such facilities should be approved and where co-location is appropriate.

After discussion, Mrs. Kipp moved, seconded by Mrs. Gennrich and carried unanimously, for approval in accordance with the “Staff Report and Recommendation”.

- **ZT-1517 (Town of Brookfield) Section 31 (From the Rs-3 Single-Family Residential District to the Rs 4 Single Family Residential District)**

Withdrawn by Town of Brookfield.

- **SCU-1332 (Mission Lakes) Town of Oconomowoc, Section 36**

Mr. Mace presented the “Staff Report and Recommendation” dated February 5, 2004, and made a part of these Minutes. He pointed out the location of the property on the aerial photograph and stated the petitioner is requesting to amend Town Conditions No. 6 and 14, in accordance with Condition No. 13, which allows revisions/alterations to conditions subject to Town and County Plan Commission approval.

Mr. Mace pointed out that on December 15, 2003, the Town of Oconomowoc Plan Commission modified Condition No. 6, which required documentation be presented to the Town Clerk stating the Department of Natural Resources (DNR) has reviewed and approved the construction and installation of the community wells, prior to the issuance of an Occupancy Permit. He said the previous condition had requested this must be accomplished prior to the issuance of the Conditional Use Permit, and according to correspondence from the Town Attorney, the condition was modified as the Town was advised the Developer did not timely file a petition for the installation of the well with the DNR. The Developer would need to wait three months before they received the required permit. Based upon the three-month waiting period, the Town altered the condition to require this document be presented to the Town Clerk prior to the issuance of the Occupancy Permit, not the Conditional Use Permit. The Town of Oconomowoc Plan Commission also amended Condition No. 14, which required that two fully-charged fire hydrants be installed in a location mutually acceptable to the Developer and Fire Chief of the Okauchee Fire Department. The Town Plan Commission has altered the condition to state, “Prior to issuance of an Occupancy Permit”.

After discussion, Mrs. Gennrich moved, seconded by Mr. Baade and carried unanimously, for approval in accordance with the “Staff Report and Recommendation”. The approval of this request, will allow the petitioner a reasonable use of his land and still promote and meet the intent and purposes of all County Ordinances.

• **SCU-1359 (Chris Graham d/b/a Ox & Cats Sports Bar and Grill) Town of Merton, Section 3**

Mr. Mace presented the “Staff Report and Recommendation” dated February 5, 2004, and made a part of these Minutes. He pointed out the location of the property on the aerial photograph and stated the petitioner is requesting Conditional Use approval for a tavern/restaurant, two living units, associated outside uses, and to allow modifications to the existing structure and parking.

Mr. Mace pointed out the property on the north side of C.T.H. “E” consists of a two-story historically-significant building, with a tavern/restaurant and a two-bedroom apartment on the first floor, and one three-bedroom apartment and dancehall on the second floor and two accessory sheds. There is a basement and crawl space used for coolers, a furnace and storage. He noted the petitioner proposes to convert the second story into two two-bedroom apartments. The second story apartment on the north side of the building would contain 1,238 sq. ft., the apartment on the south side of the building would contain 1,208 sq. ft. There is a separate ingress-egress staircase to each apartment on the east side of the building. The first floor, approximately 2,880 sq. ft., will be utilized as a tavern/restaurant. Mr. Mace explained the petitioners are proposing two dining rooms, a bar room, a kitchen, a game room, an office, storage area and two bathrooms, and to eliminate the upstairs dancehall. The petitioner proposes 45 seats in the dining area and approximately 15 bar stools in the bar room, and parking on both the north and south side of C.T.H. “E”. At this time, the petitioner is not requesting additional outside lighting. The sign will remain the same. The 4 ft. x 4 ft., 16 sq. ft., illuminated beer sign is attached to the roadside of the building and the lettering will be changed to read, “Ox & Cat’s Sports Bar & Grill”.

The building will not be expanded; however, the remodeling and repair costs will exceed 50% of the fair market value of the structure. There will be approximately \$103,500 in improvements. The fair market value of the structure is \$134,000; therefore, a Variance will be required from the Waukesha County Board of Adjustment, because the cost of the proposed construction will be approximately 77.2% of the fair market value of the improvements on the property.

The Commission reviewed photographs and discussed the aesthetically pleasing architecture of the building, which was at one time an old stage stop. Mrs. Gennrich asked if there were any concerns with the parking lot across the road? Mr. Mace replied he didn’t have any concerns, but pointed out that Mr. Krauski (the adjacent neighbor on south side of C.T.H. “E”) had concerns and questioned whether there would be adequate space for overflow parking.

Chris Graham and Verona Janichuk (Petitioners) were present in the audience.

After discussion, Mr. Janusonis moved, seconded by Mr. Baade and carried unanimously, for approval in accordance with the “Staff Report and Recommendation”, without prejudice, as the matter will go before the Waukesha County Board of Adjustment. The approval of this request, as conditioned, will allow the petitioner a reasonable use of his land and still promote and meet the intent and purposes of all County Ordinances.

- **PO-03-MRTT-3 (Chris Graham d/b/a Ox & Cats Sports Bar and Grill) Town of Merton, Section 3**

Mr. Mace presented the "Staff Report and Recommendation" dated February 5, 2004, and made a part of these Minutes. He pointed out the location of the property on the aerial photograph and stated the petitioner is requesting Site Plan/Plan of Operation approval for a tavern/restaurant, two living units, associated outside use, and to allow modifications to the existing structure and parking.

Please refer to Conditional Use No. SCU-1359 (listed above) for discussion.

After discussion, Mrs. Gennrich moved, seconded by Mrs. Kipp and carried unanimously, for approval in accordance with the "Staff Report and Recommendation", without prejudice, as the matter will go before the Waukesha County Board of Adjustment. The approval of this request, as conditioned, will allow the petitioner a reasonable use of his land and still promote and meet the intent and purposes of all County Ordinances.

SCHEDULED MATTERS

2:00 p.m.

- **SCU-116T (Higgins-Park Bay, LLC) Town of Oconomowoc, Section 36**

Kathy Moore (Senior Planner) presented the "Staff Memorandum" dated February 5, 2004, and made a part of these Minutes. She pointed out the location of the property on the aerial photograph and stated the petitioners are requesting Conditional Use approval for the proposed grading on Lot 24 in order to construct a residence. The matter of the additional grading was held in abeyance from the January 8, 2004, Park and Planning Commission meeting.

Mrs. Moore stated that the Park and Planning Commission (on January 8, 2004) approved the termination of Conditional Use Permits SCU-116A, SCU-116C, SCU-116D and SCU-116F, for the former Casa Rebecca property and allowed the applicants to retain previously unauthorized grading, but the request to complete additional grading beyond the foundation of any proposed structure was held in abeyance until detailed Grading and Vegetation Plans were submitted. On February 2, 2004, the Planning and Zoning Division Staff received correspondence from Donald Higgins (owner of Lot 24) requesting that the Zoning Permit be issued. The Grading Plan submitted shows the current grade of the residence at an elevation of 901 at the highest point on the lakeside, and the proposed yard grade to be 895.3, which will be an additional 5'7" cut in order to have an exposed basement facing the lake. The plan also shows a number of swales draining towards the lake and proposed contours; no retaining walls are shown on the submitted plan and the scale of the map is 1' = 40', which is incorrect and should be 1" = 20'. The Planning and Zoning Division Staff is recommending the matter be held in abeyance until a Grading Plan, to scale, which authorizes additional grading in order to accommodate an exposed basement residence, which meets the requirements of the Park and Planning Commission's action of January 8, 2004.

Mrs. Moore reiterated that the Grading Plan submitted by Attorney Fabyan and Mr. Higgins did not comply with the Commission's action of January 8, 2004. The Plan was not to scale and shows grading at the lakeside to be a grade elevation of 895.3, and in her interpretation there would be an additional 5'7" cut. The petitioners disagreed with her interpretation. Mrs. Moore suggested that the Commission hear what Attorney Fabyan and Mr. Higgins had to say so they could make a determination as to how the issue was to proceed. She said the petitioners feel she is reading the plan incorrectly.

Mr. Kolb asked Mrs. Moore to address the issue of the “tree removal” and asked if the petitioners required a permit to take down the trees? Mrs. Moore replied, under the Shoreland Ordinance and NR-115, trees are to be preserved within 35’ of the lake. Attorney Price clarified that it was well beyond 35’. Mrs. Moore stated the Ordinance only covers the first 35’ of shoreland and then 30’ of every 100’ of frontage for a view corridor.

Attorney Fabyan introduced Mr. Higgins (owner of Lot 24) and stated the Grading Plan submitted confines grading within 30’ of the building, and in their opinion, no action is needed by the Park and Planning Commission. He pointed out that he spoke with Attorney Price, from the Waukesha County Corporation Counsel’s office, who felt the petitioner should bring the matter directly to the Park and Planning Commission and explain what the petitioners are planning to do. He said if the Commission agrees with the Grading Plan, all issues would be resolved. Attorney Fabyan submitted photographs which were taken on the property from the lakeside and said, “Nothing was ever removed a substantial distance from the lake.” He showed a photograph where the Casa Rebecca restaurant had been torn down. He explained that Casa Rebecca was an exposed-basement tavern and, from looking at the photographs, you could see a hill which slopes down towards the lake. He pointed out that the location of the building which was torn down after the Razing Permit was issued. Attorney Fabyan said Mrs. Moore told the petitioners to remove the asphalt because she didn’t want it buried and indicated she would not issue the Zoning Permit until Casa Rebecca was torn down, and at the same time the petitioners removed the old foundation of other structures on the lots. He reiterated there was a very steep slope, and by looking at the boathouse you can see where it was dug right into the hill. He submitted photographs of other houses on the lake with exposed basements. He explained, “There is no way you can build on this lot with those slopes unless you are popping out of a hill, otherwise you can either grade that hill off, which is illegal and improper.” He said the petitioners want to resolve this issue as soon as possible so they can start construction.

Attorney Fabyan stated the most common way to build a home today on Okauchee Lake is with an exposed basement. He said, as far as the trees that were removed, there was nothing improper about cutting the trees down in order to clear the site for a building. He explained when the area behind Casa Rebecca was dug out in the back, and a septic system was put in, a situation was created that looks like a gravel pit. He said the additional grading the petitioners were requesting was coming out the back to help clean up the mess originally created. He said they could not go back to the original grade, and to retain the existing grade would not be appropriate. He said Mrs. Moore suggested to apply for a Conditional Use Permit and to retain the garage for a couple of years for storage, and include the additional grading in the back. He said this house could be built without completing grading beyond 30’ of the house, and in his opinion, no action should be necessary. He would like to recommend that additional grading be permitted in the back, because it is a mess. Mr. Baade asked how close was the house to the lake? Attorney Fabyan replied the deck is 75’ and the house is approximately 100’ from the lake.

Chairperson Willert stated, “The Grading Plan still is not according to what the Commission requested.” Mrs. Moore suggested that the matter be held in abeyance. Mrs. Kipp asked why there were so many revisions to the Grading Plan? Mrs. Moore replied, “The petitioners were trying to submit a Grading Plan they could live with, from July until they applied for the Conditional Use.” The revisions were made before the action and the petitioners were trying to show the original grade, the existing grade and the proposed grades. Mrs. Kipp said the elevations should have stayed the same. Mrs. Moore replied, “Yes and no, because when they applied for the original permit in July the site was not graded yet.” That was the original grade, and then the petitioners came in with a Grading Plan way beyond 30’ and we told them to revise it. Mr. Fabyan said what Mrs. Moore is calling grading was the removal of the foundations at the top of the hill and the knocking down of the bluff.

Mrs. Moore stated the Zoning Permit could not be issued because there was a building over the lot line, so you had to take the building down. She asked, why didn't the petitioners take the building down and not grade on top of the hill? She stated in her previous conversations with Attorney Fabyan they never talked about any buildings on top of the hill, prior to the petitioners completing the earth-altering activities.

Attorney Fabyan said the petitioners are not asking for additional grading and stated this house could be built without Park and Planning Commission approval. Mrs. Moore said the issue is the 30'. She said the Ordinance states: *"Fill or grading considered by the Zoning Administrator to be necessary backfill and/or excavation for an otherwise permitted structure, may be permitted without the necessity of securing a Conditional Use Permit, as long as the fill and/or grading is accessory to said construction and does not create greater than three to one (3:1), does not extent to a distance greater than 30' from the foundation, and does not divert runoff directly onto adjacent or adversely affect adjoining properties. In order to make such a determination, the property owners shall submit a Grading Plan of the existing and proposed grades on the subject lots and adjacent lands where such accessory fill and/or grading is closer than 20' to a property line."* She stated anytime you are grading within 20' of the lot line, you need to submit a Grading Plan for the property and the adjacent properties. She said, to date, we do not have the revised plan and asked, "Is this necessary backfill and excavation?" She pointed out where Lot 23 (50' wide lot) and Lot 24 were located and where the previous Casa Rebecca Tavern/Restaurant was located, which was on Lot 25 and 26. Mrs. Moore pointed out Lot 24 has nothing to do with Casa Rebecca. She stated the original grades were 880, 890, 900, in 2' contours, with a maximum of 904 (mean sea level). That is where Attorney Fabyan said there was a discrepancy of what he thought was out there and what the Planning and Zoning Staff's topographical map showed. Mrs. Moore said, "The problem of the topographical map is that the area is disturbed and we don't know what was there before, because they graded it." She said the original plan had a house and deck and then we got into the 30' discussion, and all of a sudden there is a patio in front of the deck so they think they can grade 30' from the patio.

Mr. Mace asked Mr. Higgins if he prepared a House Plan for this lot? Attorney Fabyan replied they were still waiting for the permit. Mr. Mace stated most people submit House Plans before the permit is issued. Mr. Higgins replied, "I won't say there are no plans, I just don't have them in front of me and this was originally completed without the expectation that we would be dealing with this matter from September 2003, to February 2004, and during this time the detailed work was scheduled to be finished."

Chairperson Willert said, when you come back from the lake 75', it appears that most of the slope is in front of the house. She asked, "Where are you going to get enough slope for a lower deck, upper deck and a walkout basement without digging something out? She asked Attorney Fabyan why didn't he comply with the Commission's action of January 8, 2004? Attorney Fabyan said they don't have to come before the Park and Planning Commission and ask for anything because they are constructing a building which does not require a Conditional Use Permit. He stated, originally, the Conditional Use applied for was with regards to the area in the back of the building (road side). He said there was no intent of doing any grading beyond 30'. Mrs. Kipp said she could not believe that Attorney Fabyan could make the statement that the "petitioners do not require any permits." Attorney Fabyan replied a Zoning Permit was required, not a Conditional Use Permit.

Attorney Price said, when Mr. Higgins submitted his proposal it was intended to go to the Zoning Administrator's office for a Zoning Permit. It was her opinion the application requested approval for grading, past grading, and for approval of the "as is" grading, which was granted on January 8, 2003. She said, in looking at the final grades, the Park and Planning Commission would need subsequent plans, because you would not issue a Zoning Permit for this type of house (exposed basement). There are other issues based on the recent history that cannot be ignored and she reiterated it was her advice that the petitioners come before the Park and Planning Commission again with the details of the previous grade,

the corrected and final grade. Attorney Price said, "I think this body (the Commission) last time acknowledged that some activity will take place as homes are put in, and we are not saying there may be special exceptions, but we want to control final grading and drainage issues between these lots." She said, when an applicant submits an application with an issue of grading on two lots, this body (the Commission) has a right to look at any grade within that legal description and they can't limit it to the area behind the house, and not on the lakeside of the house.

Attorney Fabyan stated the dark lines on the proposed Grading Plan show that drainage is being maintained on this lot. Mrs. Gennrich stated the dark lines don't show anything. She said, in her opinion, the map doesn't show anything and no one could conduct grading based on this map or submit it to a contractor. She pointed out that a piece of paper faxed at this scale, is not appropriate and the petitioners should stick to the required 1" = 20' scale, and it is important to know the extent of the additional grading. She pointed out it isn't fair to set a precedent, whereby petitioners come to the Planning and Zoning Division office without a permit and have already completed grading, and to get away with it would not be fair to other people.

There was discussion with regards to restoring the property back to its original grade. Attorney Fabyan said, "My clients never went in there with the intent to do any grading." He said somebody went in there to remove the foundations and that was why there was grading in the first place. With regards to the cliffs, Attorney Fabyan stated he would have no problem with putting them back, but it would cause erosion problems, which would be ignorant. Mrs. Kipp said she would like to make a motion that the Commission not take any further action and that the matter be held in abeyance until the Planning and Zoning Division Staff is submitted the proper Grading Plan, according to scale (1" = 20'), which was requested by the Park and Planning Commission's action of January 8, 2004.

After discussion, Mrs. Kipp moved, seconded by Mr. Janusonis and carried unanimously, for approval in accordance with the "Staff Memorandum", which states that the matter be held in abeyance until a proper Grading Plan, according to scale, is submitted".

SEMINAR APPROVAL

- **Clean Rivers, Clean Lakes**

February 10, 2004, at the Four Points Sheraton, Milwaukee North Hotel, Brown Deer, WI. Sponsored by SEWRPC and the Milwaukee Metropolitan Sewerage District.

Mrs. Kipp moved, seconded by Mrs. Gennrich and carried unanimously, for approval to attend the "Clean Rivers, Clean Lakes" Seminar on February 10, 2004, at the Four Points Sheraton, Milwaukee North Hotel, Brown Deer, Wisconsin.

CLOSED SESSION

Mrs. Kipp moved, seconded by Mr. LaPorte and carried unanimously, to go into closed session for the following item:

- **(Rainbow Springs) Town of Mukwonago, Sections 31 and 32**

Motion to convene in closed session pursuant to Section 19.85 (1) (g), Wisconsin Statutes, to confer with Attorney Debbie Price of the Corporation Counsel's office to discuss pending litigation, Rainbow Springs Golf Club vs. Waukesha County, Circuit Court Cases #03-CV-1628 and 03-CV-2779.

OPEN SESSION

Mrs. Kipp moved, seconded by Mr. LaPorte and carried unanimously, to go back to open session.

ADJOURNMENT

Mrs. Kipp moved, seconded by Mrs. Gennrich and carried unanimously, to adjourn the meeting at 3:12 p.m.

Respectfully submitted,

Mareth Kipp
Secretary

MK:smv

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